

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

January 10, 2007 Session

**TRACY J. JONES, ET AL. v. TENNESSEE RIDERS INSTRUCTION  
PROGRAM, INC., ET AL.**

**Appeal from the Circuit Court for Davidson County  
No. 04C-2976 Walter Kurtz, Judge**

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**No. M2006-01087-COA-R3-CV - Filed on February 5, 2007**

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Plaintiff, a wholly inexperienced motorcycle rider, sued Tennessee Riders Instruction Program, Inc., for injuries sustained when she wrecked during the last day of a three-day motorcycle safety course. The plaintiff's claim for gross negligence was dismissed by the trial court upon a finding there was nothing in the record which would allow a reasonable juror to conclude the defendant exercised a conscious neglect of duty or a callous indifference to consequences or such entire want of care as would raise a presumption of a conscious indifference to the consequences. The plaintiff appealed. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and PATRICIA J. COTTRELL, J., joined.

H. Tom Kittrell, Nashville, Tennessee, for the appellants, Tracy J. Jones and Shawn J. Jones.

Joel P. Surber and Frank M. Gallina, Nashville, Tennessee, for the appellees, Tennessee Riders Instruction Program, Inc., Motorcycle Safety Foundation, Inc., and Nashville State Community College.

**OPINION**

Plaintiff, Tracy J. Jones, a wholly inexperienced motorcycle rider, desired to learn how to operate a motorcycle and to obtain a license to operate a motorcycle because her husband and their mutual friends operated motorcycles and she wanted to do so as well. In furtherance of this goal, she took a beginners course from the defendant, Tennessee Riders Instruction Program, Inc. (TRIP).

TRIP offered a three-day course of instruction designed to teach novices “risk awareness” and street skills for riding a motorcycle, which included classroom instruction, testing, demonstrations and driving. As the course instructor explained: “the course is designed to take someone who has never put a leg over a motorcycle before and teach them how to ride and ride safely.” The three-day course provided the plaintiff a detailed course handbook; interactive classroom instruction; orientation of the most basic motorcycle tasks, such as throttle and break functions; simulation of common maneuvers; closed-course riding and testing with feedback, and written tests followed by more closed-course riding, all of which was supervised.

On the final day of the three-day course of training, the plaintiff sustained a serious injury to her leg while riding a motorcycle on a closed-course, a large parking lot in the back of Nashville State Community College. She lost control of the motorcycle when she applied the front wheel brake on a wet road surface, injuring herself as she attempted to brace her fall.<sup>1</sup>

She filed this action contending *inter alia* TRIP was negligent and grossly negligent by allowing her to test-drive a motorcycle on a wet surface.<sup>2</sup> Further, with the exception of the claim of gross negligence against TRIP, all other claims were dismissed previously, principally due to the fact the plaintiff had signed a written waiver which barred such claims.<sup>3</sup>

Following discovery, TRIP filed a motion for summary judgment of the sole remaining claim in this lawsuit, that of gross negligence. The trial court granted the motion, summarily dismissing the claim based upon the principles set forth in *Buckner v. Varner*, 793 S.W.2d 939 (Tenn. Ct. App. 1990). Specifically, the trial court found:

With respect to . . . Plaintiffs gross negligence claim against TRIP, the Court finds that no reasonable juror could find TRIP’s actions or inactions amounted to gross negligence. Specifically, there is nothing in the record which would allow a reasonable juror to conclude that TRIP exercised a conscious neglect of duty or a callous indifference to consequences or such entire want of care as would raise a presumption of a conscious indifference to consequences when conducting the Motorcycle Safety Course in the conditions it did when Plaintiff Tracy Jones was injured.

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<sup>1</sup>The plaintiff did not wreck the cycle in the sense she ran into another vehicle or object. Instead, she fractured her leg attempting to brace her fall as the motorcycle went out of control and fell to the pavement in the parking lot.

<sup>2</sup>The Complaint initially named three defendants and set forth multiple claims. The other two defendants were dismissed prior to the order at issue on appeal. The plaintiff’s claim of ordinary negligence against TRIP was also dismissed. None of these rulings are at issue here.

<sup>3</sup>Parties may contract that one shall not be liable and that the other party shall assume the risk incident to matters of ordinary negligence. *Buckner v. Varner*, 793 S.W.2d 939 (Tenn. Ct. App. 1990). *Moss v. Fortune*, 340 S.W.2d 902 (Tenn. 1960); *see also Empress Health & Beauty Spa, Inc. v. Turner*, 503 S.W.2d 188 (Tenn.1973). However, a contract against liability will not operate to protect a party who is guilty of gross negligence. *Buckner*, 793 S.W.2d at 941.

Gross negligence is defined as “a conscious neglect of duty or a callous indifference to consequences” or “such entire want of care as would raise a presumption of a conscious indifference to consequences.” *Buckner*, 793 S.W.2d at 941 (citing *Thomason v. Wayne County*, 611 S.W.2d 585 (Tenn. Ct. App. 1980); *Sampley v. Aulabaugh*, 589 S.W.2d 666 (Tenn. Ct. App. 1979)).

The plaintiff’s principal contention is that TRIP exhibited a conscious neglect of duty, a callous indifference to consequences by requiring that she perform her final test drive with defective equipment. She contends the wet asphalt surface, the back parking lot at Nashville State Community College, was the defective equipment.<sup>4</sup> We find this contention is without merit. Having reviewed the evidence in the record, we have concluded the material facts are not in dispute and the conclusions to be drawn from these facts would permit a reasonable person to reach but one conclusion, that the alleged acts and omissions of TRIP do not constitute gross negligence. This conclusion is based in part on the fact that prior to sustaining her injury, the plaintiff was taught the basics of riding a motorcycle, including braking, in a classroom setting for the better part of three days. The instruction included extensive written materials designed to teach safe riding, and the plaintiff was provided classroom lectures, videotape demonstrations, and interactive discussions. She passed the classroom work with exemplary grades. The instructors demonstrated every exercise prior to the plaintiff being asked to perform the exercises, and the plaintiff was supervised at all times.

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Tracy J. Jones.

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FRANK G. CLEMENT, JR., JUDGE

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<sup>4</sup>She asserts the wet surface is analogous to the defective equipment – the “ill-tempered horse” – provided by the defendant riding stable in *Buckner*.